

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, PIRELLI ARMSTRONG  
RETIREE MEDICAL BENEFITS TRUST,  
TEAMSTERS HEALTH & WELFARE FUND  
OF PHILADELPHIA AND VICINITY,  
PHILADELPHIA FEDERATION OF  
TEACHERS HEALTH AND WELFARE FUND,  
DISTRICT COUNCIL 37, AFSCME - HEALTH  
& SECURITY PLAN; JUNE SWAN;  
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri  
corporation, and McKESSON CORPORATION,  
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

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**DEFENDANT MCKESSON CORPORATION'S EMERGENCY MOTION TO  
STRIKE PLAINTIFFS' SUPPLEMENT TO THE CLASS CERTIFICATION  
RECORD, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE A  
RESPONSIVE BRIEF**

At the May 22, 2007 class hearing, this Court invited the parties to file  
supplements of evidence with no more than a three-page explanation of this evidence.  
(*See attached Exhibit A, Hearing Tr. 64:10-11, May 22, 2007*) (“[j]ust the documents and  
what issue it goes to, three pages, not like a whole new thing”). The Court clearly

instructed that the parties could file this short supplement, but “not another brief.” (*Id.* 64:8.) Plaintiffs are well aware of the Court’s explicit instructions. On July 9, 2007, plaintiffs filed a response to McKesson’s first supplement of the class certification record and acknowledged that “[t]he Court clearly limited each party to a single supplement of no more than three pages . . . .” (Pls.’ Response to McKesson’s First Supplement at 1.) Nonetheless, in direct violation of the Court’s instructions, on July 26, 2007, plaintiffs filed a whole new 16-page long brief. This unauthorized filing, styled as “Plaintiffs’ Supplement to the Class Certification Record,” extends far beyond the limited, three-page submission authorized by the Court and should be stricken.<sup>1</sup>

In the alternative, if the Court declines to strike plaintiffs’ unauthorized filing, McKesson respectfully requests leave to file a responsive brief, not to exceed 15 pages. McKesson styles this motion as an emergency motion so that if the Court declines to strike plaintiffs’ unauthorized brief, McKesson can file a timely response.

Respectfully submitted,

McKesson Corporation  
By its attorneys:

/s/ Lori A. Schechter

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Dated: July 26, 2007

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<sup>1</sup> Plaintiffs’ July 26, 2007 submission constitutes plaintiffs’ second supplement to the class certification record as plaintiffs filed their first supplement, plaintiffs’ Notice of Filing Third Party Document, on May 23, 2007. McKesson, however, does not object to plaintiffs’ submission of their July 26, 2007 Declaration of Steve W. Berman in Support of Plaintiffs’ Supplement to the Class Certification Record as this submission (excluding exhibits) comes within the three-page limit imposed by the Court.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

I, Lori Schechter, counsel of record for defendant McKesson Corporation, hereby certify that McKesson's counsel conferred with counsel for plaintiffs in an effort to resolve the issue referred to in this motion, and that the parties were unable to reach agreement with respect to this motion.

/s/ Lori A. Schechter

Lori A. Schechter

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on July 26, 2007.

/s/ Lori A. Schechter

Lori A. Schechter

# **Exhibit A**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH )  
BENEFITS FUND, et al, )  
                               )  
Plaintiffs                 )  
                               )  
-VS-                         ) CA No. 05-11148-PBS  
                               ) Pages 1 - 65  
FIRST DATABANK, INC., )  
a Missouri Corporation; )  
and McKESSON CORPORATION, )  
a Delaware Corporation, )  
                               )  
Defendants                 )

MOTION/STATUS HEARING

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
May 22, 2007, 2:05 p.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617)345-6787

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1 this record, so if we issue a decision beforehand, we do.

2 And if some new information came in that bears on this, I  
3 suppose what you should do is a motion to supplement the  
4 class certification record. It may be like a three-page  
5 brief on why it matters.

6 MS. SCHECHTER: Okay, and at a minimum, we'd like  
7 to put in the slides that we put in today, so we'll do that.

8 THE COURT: Yes, just not another brief.

9 MS. SCHECHTER: I understand. Just the documents.

10 THE COURT: Just the documents and what issue it  
11 goes to, three pages, not like a whole new thing. I'd give  
12 you the chance to do it too if you -- do you have more  
13 depositions?

14 MR. BERMAN: Yes, we do, your Honor. I mean, we're  
15 attending the same depositions, and we're going to be trying  
16 to get the evidence in our favor just like they are.

17 THE COURT: So I'm just trying to figure out. As a  
18 logistical matter, it's a very serious motion for class cert,  
19 and it takes me a while, and I have a few other things I need  
20 to write. So I think it makes sense that at least until I've  
21 written it, you should be supplementing if something is  
22 relevant, but not with a slew of new briefs, okay? What I'm  
23 hoping to do is get this out by the end of the summer.  
24 That's sort of my ideal time period.

25 MR. BERMAN: You think so?

1 C E R T I F I C A T E  
2  
3

4 UNITED STATES DISTRICT COURT )  
5 DISTRICT OF MASSACHUSETTS ) ss.  
6 CITY OF BOSTON )  
7

8 I, Lee A. Marzilli, Official Federal Court  
9 Reporter, do hereby certify that the foregoing transcript,  
10 Pages 1 through 65 inclusive, was recorded by me  
11 stenographically at the time and place aforesaid in Civil  
12 Action No. 05-11148-PBS, New England Carpenters Health  
13 Benefits Fund V. First Databank, Inc., et al, and thereafter  
14 by me reduced to typewriting and is a true and accurate  
15 record of the proceedings.

16 In witness whereof I have hereunto set my hand this  
17 24th day of May, 2007.

18  
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20  
21  
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23  
24 LEE A. MARZILLI, CRR  
25 OFFICIAL FEDERAL COURT REPORTER  
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